

**Letter of Findings: 03-20130415**  
**Withholding Tax**  
**For the Tax Periods 4/2012 and 9/2012**

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**ISSUE**

**I. Withholding Tax – Penalty.**

**Authority:** IC § 6-8.1-10-5; IC § 6-8.1-5-1; [45 IAC 15-11-5](#).

Taxpayer seeks abatement of the 100 percent penalty imposed by the Department.

**STATEMENT OF FACTS**

Taxpayer is a company doing business in Indiana. Taxpayer made a payment for withholding taxes to the Indiana Department of Revenue ("Department"); Taxpayer's payment was not honored by Taxpayer's bank. As a result of this, the Department issued a 100 percent penalty assessment against Taxpayer. Taxpayer filed a protest regarding the 100 percent penalty assessment. The Department conducted an administrative hearing by telephone, and this Letter of Findings results. Further facts will be provided as required.

**I. Withholding Tax – Penalty.**

**DISCUSSION**

Taxpayer argues that it is entitled to abatement of the penalty for late payment of employee withholding tax. Taxpayer in its protest letter states in relevant part:

I would like the 100 [percent] penalty that was charged to be reduced to the standard 10 [percent] fee.

On May 15<sup>th</sup> I sent in a payment on my payment plan for April & September 2012 withholding. Unbeknownst to me it was returned by my bank. I immediately sent out another check on June 7<sup>th</sup>. On June 10<sup>th</sup> the Department issued me 2 notices of returned payment. I did not read them as thoroughly as I should have because I had already sent in a replacement check. If I had I would have seen there was a 10 [percent] fee added to the amounts that I paid. Unfortunately, I only repaid the original amount that was returned and as a result I was charged a 100 [percent] penalty.

(Emphasis added).

IC § 6-8.1-10-5 states:

(a) If a person makes a tax payment with a check, credit card, debit card, or electronic funds transfer, and the department is unable to obtain payment on the check, credit card, debit card, or electronic funds transfer for its full face amount when the check, credit card, debit card, or electronic funds transfer is presented for payment through normal banking channels, a penalty of ten percent (10[percent]) of the unpaid tax or the value of the check, credit card, debit card, or electronic funds transfer, whichever is smaller, is imposed.

(b) When a penalty is imposed under subsection (a), the department shall notify the person by mail that the check, credit card, debit card, or electronic funds transfer was not honored and that the person has ten (10) days after the date the notice is mailed to pay the tax and the penalty either in cash, by certified check, or other guaranteed payment. If the person fails to make the payment within the ten (10) day period, the penalty is increased to one hundred percent (100[percent]) multiplied by the value of the check, credit card, debit card, or electronic funds transfer, or the unpaid tax, whichever is smaller.

(c) If a person has been assessed a penalty under subsection (a) more than one (1) time, the department may require all future payments for all listed taxes to be remitted with guaranteed funds.

(d) If the person subject to the penalty under this section can show that there is reasonable cause for the check, credit card, debit card, or electronic funds transfer not being honored, the department may waive the penalty imposed under this section.

(Emphasis added).

Departmental regulation [45 IAC 15-11-5](#) states:

For purposes of [IC 6-8.1-10-5](#), reasonable cause for waiving the penalty shall constitute circumstances which were totally beyond the control of the taxpayer. Determination of reasonable cause is at the discretion of the department.

The Department also notes that under IC § 6-8.1-5-1(c), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment – including an assessment of a penalty – is presumptively valid.

Taxpayer has not established reasonable cause for the payment not being honored. At the hearing, Taxpayer stated that it was in litigation with another company, and that Taxpayer's bank account was frozen due to the litigation. Additionally, Taxpayer stated in the protest letter that the Department's notice was not thoroughly read. Taxpayer, under IC § 6-8.1-5-1(c) bears the burden of proof; in the case at hand, Taxpayer has not met that

burden.

**FINDING**

Taxpayer's protest is denied.

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